IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

Crl.Rev.Pet.No. 700 of 1999

CRA.200/1997 of I ADDL. SESSIONS COURT, THRISSUR
CC.83/1995 of CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR

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REVN. PETITIONER/APPELLANT/ACCUSED:

SUBRAMANIAN, S/O VELAYUDHAN,
MAMBULLI VEEDU, ARIMBOOR,
PARAKKAD VILLAGE.

BY ADV. SRI.P.VIJAYA BHANU
SRI.S.R.MANOJ

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA REP.BY PUBLIC
PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.M.FIROZ

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

Crl.R.P.No. 700 of 1999

ORDER

The accused in C.C.No.83/95 on the file of the Chief Judicial Magistrate's Court, Thrissur, convicted for offence under Sections 279 and 304(A) IPC and sentenced under Section 304(A) IPC to undergo simple imprisonment for one year and to pay a fine of Rupees twenty five thousand and in default to undergo simple imprisonment for a term of three months and further, under Section 279 IPC to undergo simple imprisonment for two months is the revision petitioner. He challenged the said conviction and sentence in Crl.A.No.200/97 before the Sessions Court, Thrissur. The Sessions Judge, vide judgment in the said appeal, confirmed the conviction. But, all the same he reduced the fine amount to Rupees five thousand and in default of payment of fine to undergo simple imprisonment for

a term of two months. Hence, this revision.

2. It is vehemently contended before me by the learned counsel for the petitioner that there is absolutely no evidence in the case to connect the accused with the commission of the crime, as there is no evidence to establish that he was the driver of the bus involved in the accident, at the time of the accident taking place, though the occurrence stands established on the evidence in the case.

3. PW1 is the informant in the case. It is on the basis of Exhibit P1 F.I. Statement given by him that the crime is registered by PW8, the C.I. of Police, drawing up Exhibit P1(a) FIR in that behalf. No doubt, he has identified in Court the accused as the driver of the bus involved in the accident. According to him, the driver, who took to heels immediately after the accident, was intercepted by the pedestrians and a scuffle occurred there and then he saw the face of the driver of the bus. It is worthy to note that he has no prior acquaintance with the accused. He has also

denied the suggestion in cross-examination that it was not the petitioner, who was driving the bus involved in the accident. PWs 2 to 5 have disowned the occurrence taking place. They also did not identify the accused as the driver of the bus involved in the accident. No test identification parade also is conducted by the Investigating Officer. It is true that PW9 is the attestor to Exhibit P10 seizure mahazar of Exhibit P11 trip sheet. But, PW10, the Head Constable, has not stated anything about the contents of Exhibit P11 trip sheet. It is stated that the conductor of the bus was producing Exhibit P11 before the Investigating Officer. The said conductor was not examined as a witness to prove Exhibit P11. The result is that there is absolutely no evidence to prove Exhibit P11. Consequently, therefore, the only evidence to establish that the petitioner was the driver of the bus involved in the accident is the testimony of PW1. Even according to PW1, he had no prior acquaintance with the said driver and

he did not say that he has identified the features of the driver while he was taking to heels or while he was on the driver seat of the bus. His only case is that there occurred a scuffle between the driver and the pedestrians, when the pedestrians tried to intercept the driver, who was taking to heels and then he saw the face of the driver and therefore, he is able to identify the petitioner as the driver of the bus involved in the accident.

4. It is to be noted that there is absolutely no evidence as regards any scuffle having taken place between the driver and the pedestrians. In chief examination also, PW1 has not stated that the driver, who was taking to heels was intercepted by the pedestrians, who were coming in the opposite direction and there ensued any scuffle between them. Hence, when the scuffle took place, he saw the face of the driver and therefore, he can identify the driver as the accused in the dock can only be taken as an explanation given by PW1 in cross-examination to substantiate his stand that it

was the accused himself, who was the driver of the bus, at the time of the accident taking place. In the absence of any reliable evidence to establish that the petitioner/accused was the driver of the bus involved in the accident, at the time of the accident taking place, the courts below erred in entering into a conviction of the petitioner. The conviction of the petitioner by the courts below is, hence, illegal, irregular and improper.

In the result, allowing this revision, I set aside the conviction and sentence passed by the courts below against the petitioner and acquit him of the offences under Sections 279 and 304(A) IPC. His bail bond is cancelled.

10th January, 2007 (K.P.Balachandran, Judge)

tkv

K.P.Balachandran, J.

Crl.R.P.No.700 of 1999

ORDER

10th January, 2007